

Gregg Roberts
43430 E Florida Ave Ste #F-293
Hemet CA 92544
951-330-4450
gregg@legalsupport-sc.com
Assignee of Record and Judgment Creditor, Pro Se

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – RIVERSIDE DIVISION

In re Jihad Saker,
Debtor

Gregg Roberts,
Plaintiff,
v.

Jihad Saker,
Defendant

Main Case #6:23-bk-10976-SY
Chapter 7

Adv. Proc. Case #6:23-ap-01055-SY

Amended

**RESPONSE IN OPPOSITION TO
MOTION TO DISMISS AND REQUEST
FOR LEAVE TO AMEND**

Judge: Hon. Scott H. Yun

A. SUMMARY

The Motion casts many aspersions but barely makes a dent in the overall adequacy of the Complaint. The Motion points to the weakest portions of the Complaint, ignoring the fact that several sets of allegations are made in the alternative with a stronger prong than the one attacked. The Motion implies that the case is already at the stage where evidence must be supplied; clearly that is not true. Allegations that Roberts cannot YET prove must be assumed to be true for purposes of a motion to dismiss, as long as they meet the general plausibility requirements of

1 *Twombly* and *Iqbal*. Debtor counsel must be aware of these things, but is apparently hoping that
2 Roberts and his Court are not.
3

4 Regardless, Roberts acknowledges that the Complaint could be strengthened. Roberts
5 requests leave to do so. Although he has identified some specific places where he would like to
6 add some allegations, he invites guidance from this Court as to the specific issues that need
7 attention. This will help minimize the chance of an additional Motion to Dismiss, moving the
8 case forward with judicial economy.
9

10 Leave to amend shall be liberally granted. “The court should freely give leave when
11 justice so requires.” FRCP 15, which “applies in adversary proceedings.” FRBP 7015.
12

13 “In the Central District, the plaintiff in an adversary proceeding almost always gets at
14 least one extra bite at the apple, if not two or three.”

15 The Hon. Scott Clarkson, at a telephonic hearing on a Motion to Dismiss one of Roberts’
16 previous adversary complaints.¹
17
18
19
20
21
22
23
24

25
26 ¹ Roberts does not remember the date of this hearing and does not have the resources to order
27 transcripts of all the hearings, but he clearly remembers the essential details of the statement.

Contents

A. SUMMARY	1
B. DETAILED RESPONSES TO THE MOTION REGARDING THE 523(a)(6) CAUSE OF ACTION	6
1. Statute of Limitations Objection.....	6
2. Objection Based on Insufficient Specificity as to the Agency Relationship.....	8
3. Objection Based on Not Imputing Conduct or Knowledge to the Principal.....	14
4. Objection Based on Agent Not Being a Partner	16
C. DETAILED RESPONSES TO THE MOTION REGARDING THE 727 CAUSE OF ACTION	18
1. Objection Based on Denying the Evidence and Seeing the Trustees as Infallible ...	18
2. Objection Based on Pretending the Debtor Is Allowed to Give a False Account As Long As It Is Unsworn; and Based on Assertions Outside the Complaint.....	25
D. CONCLUSION	26

Cases

<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007)	14
<i>Berr v. FDIC (In re Berr)</i> , 172 B.R. 299.....	7
<i>Cal. Capital Ins. Co. v. Riley (In re Riley)</i> , BAP No. CC-15-1379-TaLKi	8, 10
<i>Caneva v. Sun Cmtys. Operating Ltd. P'ship (In re Caneva)</i> , 550 F.3d 755	23, 24
<i>Cecchini</i> , 780 F.2d at 1444	12
<i>Devers v. Sheridan (In re Devers)</i> , 759 F.2d 751, 754 (9 th Cir.1985)	25
<i>Grogan v. Garner</i> , 498 U.S. 279	7
<i>Honkanen v. Hopper (In re Honkanen)</i> , 446 B.R. 373	8
<i>In re An</i> , BAP No. CC-16-1001-KuFKi.....	9
<i>In re Devers</i> , 759 F.2d at 754	24
<i>In re Khalil</i> , 578 F.3d 1167 (2009), p. 2, 09 Cal. Daily Op. Serv. 10,852, 2009 Daily Journal D.A.R. 12,601	25
<i>In re Lauricella</i> , 105 B.R. 536.....	14
<i>In re Retz</i> , 606 F.3d 1189 (2010) Bankr. L. Rep. P 81,776, 10 Cal. Daily Op. Serv. 6914, 2010 Daily Journal D.A.R. 8241	24
<i>In re Roberts</i> , 331 B.R. 876 (2005).....	25
<i>In re Tsurukawa</i> , 258 B.R. at 198.....	9
<i>In re Wills</i> , 243 B.R. 58 (1999) at 63-64, 43 Collier Bankr.Cas.2d 852, 35 Bankr.Ct.Dec. 121, Bankr. L. Rep. P 78,086	24
<i>In re Wright</i> , 364 B.R. 51 (2007),.....	25
<i>In re Wyatt</i> , 625 B.R. 184 at 190-191 (2020), Bankr. L. Rep. P 83,604.....	24
<i>Kelly v. Okoye (In re Kelly)</i> , 182 B.R. 255.....	7
<i>Lucido v. Superior Court</i> , 51 Cal.3d 335	7
<i>Rhoades v. Wikle</i> , 453 F.2d 51, 53 (9th Cir. 1971).....	24
<i>Sergent v. Haverland (In re Haverland)</i> , 150 B.R. 768, 771 (Bankr.S.D.Cal.1993).....	24

1	<i>Smith v. Grondin (In re Grondin)</i> , 232 B.R. 274, 277 (1st Cir. BAP 1999)	25
2	<i>Weiner v. Perry, Settles & Lawson (In re Weiner)</i> , 208 B.R. 69, 72 (9 th Cir. BAP 1997).....	24
3	Statutes	
4	California Civil Code § 3519.....	13
5	FRCP 8(d)(2) / FRBP 7008(d)(2)	12

B. DETAILED RESPONSES TO THE MOTION REGARDING THE 523(a)(6)

CAUSE OF ACTION

1. Statute of Limitations Objection

MOTION: “Plaintiffs allegations are barred by the statute of limitations. Bankruptcy Court applies state law statute of limitations. In this case, Plaintiff allegations willful or malicious conduct is barred by the 2 year statute of limitations in CA for intentional torts. Therefore, if Plaintiff wanted to assert intentional tortious claims against Defendant, it must have been brought within 2 years of the act. Accordingly, the statute of limitations as to willful or malicious or intentional torts has run.” 3:20-22.

RESPONSE: This is a shocking misstatement of both the relevant facts of this case and the applicable law. The state court Complaint DID allege intentional tort, at Item 10(c):

SHORT TITLE: LAWLER, et al. v., AHALENA HOOKAH LOUNGE, et al.

CASE NUMBER:

CIVDS1607235

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. ☐ Motor Vehicle
- b. ☒ General Negligence
- c. ☒ Intentional Tort
- d. ☐ Products Liability
- e. ☒ Premises Liability
- f. ☒ Other (specify): Wrongful Death

Ex. 1, p. 3.

How did the represented Debtor/Defendant miss that?

As for the law, bankruptcy courts routinely re-examine the facts of how a debt arose and reach conclusions about what was in the mind of the debtor regarding the events that caused or created the debt, even if no allegations about the debtor’s state of mind were made in state court litigation. Bankruptcy courts are restrained against making findings that go beyond the findings

RESPONSE IN OPPOSITION TO MOTION TO DISMISS AND REQUEST FOR LEAVE TO AMEND

1 of a previous court *only to the extent that there is issue preclusion*. The elements required to
2 except a debt from discharge do not need to be alleged in the state court litigation for the debt to
3 be ruled nondischargeable in Bankruptcy Court.
4

5 Unlike claim preclusion, issue preclusion *may* apply to a dischargeability claim. See
6 *Grogan v. Garner*, 498 U.S. 279 at 284 n. 11, 111 S.Ct. 654 (“We now clarify that collateral
7 estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a).”).
8 Six criteria must be met for issue preclusion to apply to a California judgment under *Lucido v.*
9 *Superior Court*, 51 Cal.3d 335 at 341-43, 272 Cal.Rptr. 767, 795 P.2d 1223: (1) the issue “must
10 be identical to that decided in a former proceeding”; (2) it “must have been actually litigated in
11 the former proceeding”; (3) it “must have been necessarily decided in the former proceeding”;
12 (4) “the decision in the former proceeding must be final and on the merits”; (5) “the party against
13 whom preclusion is sought must be the same as, or in privity with, the party to the former
14 proceeding”; and (6) application of issue preclusion must be consistent with the public policies
15 of “preservation of the integrity of the judicial system, promotion of judicial economy, and
16 protection of litigants from harassment by vexatious litigation.” Whether the elements of issue
17 preclusion are met is a factual issue on which Karapet has the burden to “introduce a record
18 sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior
19 action.” *Kelly v. Okoye (In re Kelly)*, 182 B.R. 255, 258 (9th Cir. BAP 1995); *Berr v. FDIC (In*
20 *re Berr)*, 172 B.R. 299, 306 (9th Cir. BAP 1994). This burden is made weightier by the
21 presumption against applying issue preclusion in nondischargeability cases. *Honkanen v. Hopper*
22
23
24
25
26
27

(*In re Honkanen*), 446 B.R. 373, 384 (9th Cir. BAP 2011). [From *In re Yaikian*, 508 B.R. 175, 183-184 (Bankr. S.D. Cal. 2014).]

The state court did not issue findings of fact and conclusions of law or state anything else that would allow us to know the basis for the award of judgment. Accordingly, there is no issue preclusion as to whether the damage was done negligently or through an intentional tort. *Ex. 2*.

2. *Objection Based on Insufficient Specificity as to the Agency Relationship*

MOTION: “Section 523(a)(6) clearly requires a “willful and malicious injury by the debtor. ...” Plaintiff can meet this standard only if one imputes to the Debtor the knowledge and intent of unknown agents, representatives, or other person acting on her behalf or at her unspecified direction. Such an application involves inappropriate speculation and calls for an extremely attenuated conclusion of law with respect to agency. We are unable to determine that the Debtor acted with willfulness and malice based on the admissions. . . when they leave open the possibility that the damage to the Property was done by others. And we, like the bankruptcy court, reach this conclusion notwithstanding that the Debtor may have had an unspecified agency relationship with these third parties and may have directed them in an unspecified manner. *Cal. Capital Ins. Co. v. Riley (In re Riley)*, BAP No. CC-15-1379-TaLK, at 16-17 (B.A.P. 9th Cir. June 8, 2016).” 8:7-19.

RESPONSE: *Riley* is an unpublished case, and as such may have only persuasive, not precedential, value.

Roberts has put forth his own effort, to no avail, to find *binding* precedent that is precisely on point. The most applicable discussion that he found is as follows, in a ruling issued just six weeks after the same Panel issued its ruling in *Riley*:

“When, as here, there are no allegations, evidence or findings that the debtor participated in the spouse’s nondischargeable conduct or that a partnership or principal-agent relationship existed between the spouses, the bankruptcy court commits reversible error

1 by imputing the nondischargeable conduct to the debtor. *Id.* at 270 (citing *In re*
2 *Tsurukawa*, 258 B.R. at 198).”

3 *In re An*, BAP No. CC-16-1001-KuFKi at 5, unpublished, Not Reported in B.R. Rptr.
4 (B.A.P. 9th Cir. July 27, 2016), 2016 WL 4077291.

5 The clear implication of this statement is that if there *had* been such allegations of a
6 principal-agent relationship – as there are in Roberts’ Complaint – there might have been no
7 error in imputing the nondischargeable conduct to the debtor. Accordingly, it would not be error
8 to allow the case to go forward without amendment to this aspect of the Complaint.
9

10 If the above is not enough, Roberts respectfully reminds this Court that his Honor
11 suggested to Roberts that an adversary complaint for nondischargeability might be appropriate:
12

13 “I don’t think there’s cause to dismiss this [bankruptcy petition], but if your allegations
14 are right, it may be [that] this debt is nondischargeable. So I’m inclined to deny this
15 motion, but I think you should consider filing a nondischargeability complaint.”²

16 *Recording of Hearing on Roberts’ Motion to Dismiss Bankruptcy Petition*, March 2,
17 2023, filename RS302_20230608-0954_01d999ef3fc13380.mp3, provided to Roberts on
18 CD by the Bankruptcy Clerk’s office, time codes 3:11-3:25.

19 This Court expressed no concerns about Roberts’ agency theory, which was clearly
20 expressed on page 15 of his Motion to Dismiss the Bankruptcy Petition (although in his
21 Complaint, Roberts amplified on that theory and alleged alternative versions of it)³.
22

23
24 ² Roberts had already been planning to file an adversary complaint on 523 and 727 grounds, but
25 he appreciated the reassurance from the Court.

26 ³ The only substantive difference in the allegations relating to the injury in the Complaint relative
27 to Roberts’ Motion to Dismiss the Petition, is that Roberts realized he was mistaken in alleging
28 that Stokes was a minor at the time of the shootings. Roberts had misread something indicating

1 It was certainly already clear to this Court from that earlier Motion that the Debtor was
2 not the shooter on the night of the 2014 killings. So how else, other than through an agency
3 theory, was Roberts to bring an adversary proceeding for willful and malicious injury?
4

5 The necessity for such a theory does not mean that it necessarily “involves inappropriate
6 speculation” or “calls for an extremely attenuated conclusion of law”. The Motion cites none of
7 the allegations from California Capital’s complaint against Riley to show that Roberts’
8 allegations are equally inadequate. Neither this Court nor Roberts are required to read the entire
9 cited case looking for language to support the position expressed in the Motion.
10

11 While it is true that in his Complaint, Roberts “repeatedly imputes Suav’s knowledge to
12 Defendant,” the Motion in no way makes clear that those imputations are inadequate under *Riley*
13 (or, more properly, under the *binding* precedent(s) on which *Riley* was presumably based).
14

15 Certainly, Roberts’ allegations did not consist solely of allegations about “Suav’s”
16 training or the lack thereof. Rather, *as one of several alternatives*, the allegations referred to the
17 Debtor/Defendant’s knowledge. It has not yet been factually determined who was actually in
18 charge at the Ahalena Hookah Lounge that night, nor what knowledge had or had not been
19 communicated from any possible agent to the Debtor/Defendant as the principal (if indeed he
20 was not managing the Lounge that night). Those are matters for discovery.
21
22
23
24

25 _____
26 Stokes’ age in the transcript of his testimony; Roberts realized his mistake when he later read a
27 news article stating that Stokes was 32 years old at the time of his arrest for the shootings.
28

1 Moreover, among the alternative theories in the Complaint – perhaps the one with the
2 greatest merit – is that the shooter, Travon Stokes, was injured by being provided with alcohol
3 and possibly cocaine by *either* the Debtor *or* his *agent* Suav. Stokes then essentially became the
4 *instrument* through which the injury underlying the *judgment debt* was committed. Roberts
5 clearly alleged in the Complaint that the provision of the alcohol to Stokes was willful and
6 malicious:
7

8
9 “24. Suav brought Stokes’ vodka bottle in for him past the door security person, and let it
10 be known to the door security person that Stokes was not to be patted down.” *Complaint*,
11 p. 6.

12 “29. Suav knew that providing hard liquor to Stokes was substantially certain to lead to
13 injury to Stokes and/or to others.” *Id.*, p. 7.

14 The Motion alleged that both Suav and the Debtor/Defendant had this knowledge, which
15 did not have to be transferred from one of them to the other. It is common sense and common
16 knowledge, for someone old enough and with the basic ability to manage a hookah lounge, that
17 any alcohol and especially hard liquor damages the brain’s functioning. The effects relevant here
18 are impairment of judgment and reduction of inhibition. “The Debtor is charged with the
19 knowledge of the natural consequences of his actions.” *In re Ormsby*, 591 F.3d 1199, 1206 (9th
20 Cir. 2010). The fact that the provision of the liquor to Stokes was authorized and even invited by
21 him is irrelevant. He got injured by it, and as a result three young men were shot dead.
22

23 The Motion also adequately alleged that Suav and the Debtor knew of Stokes’ gang
24 affiliation or aspirations (p. 5, para. 19), and that “Stokes habitually carried a firearm” (p. 5, para.
25
26
27

20). For Suav or the Debtor to “walk Stokes in” past security, as alleged, shows that the injury was willful.

Whether *the entire chain of injuries* that would ensue from that *first* injury had to be subjectively known to the Debtor/Defendant, is perhaps the real legal question here. Roberts’ position, as alleged, is that once the first domino fell – with the subjective knowledge, by “Suav” and/or the Debtor/Defendant Saker, of the substantially certain injury to Stokes – the remaining dominoes were also subjectively certain to cause the injury leading to the debt (even if the *specific, final* victims were *not* known to the debtor or his agent, only the fact that there would be some victims, starting with Stokes).

“If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.” FRCP 8(d)(2) / FRBP 7008(d)(2).

MOTION: “Under Agency theory, however, a principal is not liable for the intentional or malicious conduct of an Agent.” 8:23-24. [Citing *Cecchini*:] “[T]here was insufficient evidence to establish that the business was intended to or did benefit from the wrongful conduct of James Chadick.” 9:21-24.

RESPONSE: The Motion cites no law in support of the first sentence in the above excerpt, and it is not a true statement of the law. Indeed, if it were the law, it would establish a perverse incentive; principals could almost *never* be held accountable for the actions of their agents, because the principal could always claim that the actions of the agent were intentional rather than negligent. Yet, intentional actions that cause injury should be punished more, not less, severely than negligent ones.

1 “However, unless the limitations of the agency are known or can be readily ascertained,
2 the principal may be bound by unauthorized acts of an agent through which a third party
3 has sustained a loss if reasonable reliance on the agent’s authority is demonstrated....
4 Often, a principal is liable for the tortuous [*sic*] acts of an agent within the course and
5 scope of the agent’s employment. However, it must be emphasized that unless the
6 principal commands or directs the act, a principal is not liable for the torts committed by
7 an agent while acting adversely to the principal or outside the scope of the agent’s
8 employment.

9 <https://www.stimmel-law.com/en/articles/agency-basic-law>⁴

10 It was within the scope of Suav’s employment (or partnership duties; see below) to
11 control access to the Lounge (and Roberts could obviously amend the Complaint to state this).
12 Otherwise the security guard at the door would not have deferred to Suav when he “walked
13 Stokes in”. Whether it was within that same scope to provide alcohol and illicit drugs to favored
14 customers is another question for discovery, but it could certainly be alleged in an Amended
15 Complaint. This is not the stage of the litigation to be talking about “insufficient evidence.”

16 “He who can and does not forbid that which is done on his behalf, is deemed to have
17 bidden it.”

18 California Civil Code § 3519, one of the *maxims of jurisprudence*.

19 The more paying customers who were allowed into the Hookah Lounge, the more money
20 the Debtor would make. Clearly, allowing Stokes to enter the Hookah Lounge was done on the
21 Debtor/Defendant’s behalf. The Debtor/Defendant’s business *did* benefit from the wrongful
22

23
24 ⁴ Roberts requested from Stimmel Law, both through its website and by telephone, citations in
25 support of its secondary source statement. No response was received by the time of filing of this
26 Response. And Roberts has searched the Internet, to no avail, for citations in support. However,
27 he has heard the principal in the excerpt stated numerous times over the years and believes it to
28 be a fair statement of black letter law.

1 conduct of his agent (if indeed “Suav” is not the Debtor/Defendant): Stokes must have been
2 charged a cover charge to enter the Lounge, or must have habitually purchased items such as
3 tobacco from the Lounge, or must have habitually brought with him other customers who *did* pay
4 money to the Lounge for such things; otherwise Stokes would not have been allowed in. This is
5 common sense and certainly plausible under *Twombly*. Roberts seeks leave to file an Amended
6 Complaint that makes the relevant allegations.
7

8
9 *3. Objection Based on Not Imputing Conduct or Knowledge to the Principal*

10 **MOTION:** “Plaintiff cites *Lauricella* but fails to distinguish it from the case at hand. The
11 court in that case too did not impute conduct or knowledge to the principal because the
12 partner was not acting in the ordinary course of business. In this case, not only was [*sic*]
13 the actions that led to the injury not part of Defendant’s ordinary course of business, but
14 Defendant was not partners with Suav.” 10:1-2.

15 **RESPONSE:** Roberts did not cite *Lauricella* as if it disposed of all the issues, but rather to
16 illustrate that Congress did allow for a finding of nondischargeability in connection with an
17 action that is not actually *substantially certain* to result in injury: driving while under the
18 influence of alcohol or another intoxicating drug. It is common knowledge within the purview of
19 this Court that many people drive while over the legal limit for blood alcohol without causing
20 injury to anyone. And yet, when a driver under the influence *does* cause injury as a result of
21 being over the legal limit, the debt arising such an injury is nondischargeable. This provides
22 some wiggle room in terms of interpreting 11 USC 523(a)(6) harmoniously with the entire
23 statute and the interpretation of “substantially certain” from case law. “Substantially certain”
24 does not mean “absolutely certain,” nor even does it mean “certain beyond a reasonable doubt”.
25 The bar for “substantially certain” is simply not that high.
26

1 Moreover, the two allegations of fact in the last sentence of the excerpt from the Motion
2 – about the ordinary course of business and the partnership issue – assert facts outside the
3 parameters of the Complaint. They can be given no weight here. Such allegations might be
4 appropriate to assert as denials or affirmative defenses in an Answer, but not in a Motion to
5 Dismiss, even if they were supported by declaration (which they were not – and if they are true,
6 why weren't they so supported?).
7

8
9 If Roberts needs to amend the Complaint to allege that such irresponsible behavior on the
10 part of Debtor/Defendant and/or his agent were part of the ordinary course of business – at least
11 with VIP customers – he should be granted leave to do so. Such an allegation would be plausible.
12 The Complaint alleged “Suav brought Stokes’ vodka bottle in for him past the door security
13 person, and let it be known to the door security person that Stokes was not to be patted down.”
14 Para 24. That allegation was based on Travon Stokes’ sworn testimony at his trial for the
15 killings:
16

17
18 Q Okay. Now, we talked about it a little bit. Why did you get the gun?

19 A As I said, I always kept it on me for my protection after my friend [was killed], and I
20 also knew that I was gonna be able to walk into the Hookah Lounge without being patted
21 down.

22 Q Because why?

23 A Because Suav’s family owned the place. He came out there to meet us and basically
24 walked us in, and I had a bottle of alcohol with us. He took that in.

25 *Stokes Trial Transcript*, Ex. 3.⁵
26

27 ⁵ See also Ex. 10 to Roberts’ Motion to Dismiss [Petition], lead case DE # 17.
28

1 Thus, it wasn't by mere luck that Stokes was able to "walk into the Hookah Lounge
2 without being patted down" and presumably also get his vodka brought in for him. He had
3 obviously been there at least a few times before and been extended such courtesy. That courtesy
4 by Debtor/Defendant and/or his agents toward people such as Mr. Stokes did not need to be
5 extended to all customers, for them to be part of the ordinary course of business. Many
6 businesses distinguish between "everyday" customers and VIP customers. The practice of one
7 way of handling one situation one way and the other way of handling the other, do not put the
8 courtesy "outside the ordinary course of business".
9
10

11 Roberts could similarly amend the Complaint with regard to the statement about the
12 Debtor/Defendant and Suav being partners. A man who identified himself to Roberts as one of
13 the Debtor/Defendant's sons and the person managing the Lounge that night⁶, also stated to
14 Roberts that family members – apparently including this son – had been financially supporting
15 the Debtor/Defendant's various businesses for a number of years, but had gotten tired of losing
16 money by doing so, and so decided to stop funding the last such business, the E Street Market.
17
18

19 See the next Motion excerpt and response below.
20

21 *4. Objection Based on Agent Not Being a Partner*

22 **MOTION:** "There is no legal theory that Defendant is liable for the actions of an agent,
23 especially a non partner not acting in the ordinary course of business." 10:3-4.
24

25 ⁶ That unsworn statement could certainly have been false, intended only to try to persuade
26 Roberts to stop trying to collect the debt. And Stokes could have been confused or mistaken
27 about who actually "owned the place" relative to "Suav".
28

1 **RESPONSE:** The sweeping generalization in the first part of that sentence is clearly false. More
2 often than not, a principal *is* liable for the actions of his agent, especially when the agent is an
3 employee of the principal (*respondeat superior*). The agent need not be a *partner* of the principal
4 for this to be true; an employee-employer relationship is sufficient. Moreover, if “Suav” was
5 among the family members who contributed money to keep the Debtor/Defendant’s businesses
6 afloat, then by all rights he *was* a partner.
7

8
9 Again, the Complaint could easily be alleged to add all relevant allegations. Amendment
10 would *clearly* not be futile.
11

12 Finally, it was unlawful (“a public nuisance”) for the Debtor/Defendant, whether
13 personally or through his agent or partner, to allow the consumption of alcohol on the premises
14 of the Lounge, given that it was not licensed to serve alcohol. This is true regardless of whether
15 the alcohol was brought in by the customer personally or with the assistance of an employee or
16 partner managing the premises:
17

18 “It is a public nuisance for any person to maintain any club room in which any alcoholic
19 beverage is received or kept, or to which any alcoholic beverage is brought, for
20 consumption on the premises by members of the public or of any club, corporation, or
association, unless the person and premises are licensed under this division....

21 The Attorney General or any district attorney may bring an action in the name of the
22 people to abate the nuisance, and the Attorney General shall, upon request of the
department, bring the action.

23 California Business and Professions Code § 25604.
24

25 The unlawfulness of a debtor’s conduct provides additional plausibility that the conduct
26 was willful and malicious. The purpose of requiring licensing for alcohol-serving establishments
27

has to do with being able to discern the level of intoxication of a customer for the purpose of public safety:

The topics covered in this course include:

The Social Impact of Alcohol

The Impact of Alcohol on the Body

State Laws and Regulations Relating to Alcoholic Beverage Control, Including Laws and Regulations Related to Driving Under the Influence

Intervention Techniques to Prevent the Service or Sale of Alcoholic Beverages to Underage Persons or Intoxicated Patrons

Development of Management Policies that Support the Prevention of Service or Sale of Alcoholic Beverages to Underage Persons or Intoxicated Patrons.

California Responsible Beverage Service Training, excerpt downloaded by Roberts from <https://foodserviceprep.com/Courses/CaliforniaRBSAlcoholSellerServer>, October 21, 2023.

Roberts requests leave to amend the complaint to add allegations relevant to this issue.

C. DETAILED RESPONSES TO THE MOTION REGARDING THE 727 CAUSE OF ACTION

1. Objection Based on Denying the Evidence and Seeing the Trustees as Infallible

MOTION: “In his Complaint, Plaintiff concludes without any factual support or sworn declaration that Defendant concealed, destroyed and failed to preserve documents. Plaintiff ignores the testimony that resulted from extensive examination by the Chapter 7 Trustee, the UST, and Roberts himself, at the continued Meeting of Creditors on May, 17 2023. In that meeting, Debtor was questioned by all three of the above and the Chapter 7 trustee and the US Trustee both determined that there was no evidence that Debtor concealed, destroyed or failed to preserve documents.” 9:8-16.

RESPONSE: First, Roberts had no duty, nor is it normal practice, to include a sworn declaration with the Complaint. Counsel for Debtor/Defendant certainly knows that all well-pleaded allegations of the Complaint must be taken as true for purposes of a motion to dismiss.

1 The above statement in the Motion is disingenuous for another reason. Not only did
2 Roberts make well-pleaded allegations in support of his conclusions about destruction,
3 concealment, or failure to preserve documents; he went beyond his duty in a Complaint by
4 providing *documentary evidence* – the kind of evidence that is almost always taken as more
5 convincing than self-serving testimony. This portion of the Complaint started with paragraph 51
6 on page 9:
7

8
9 “51. The records haphazardly provided to Roberts eventually showed twenty-
10 eight (28) transfers to a Wells Fargo account for which no statements had been
11 provided, totaling \$21,703.49. Exhibit 8 to Roberts’ Motion to Dismiss (main
case DE #17), p. 1.”

12 52. These transfers were sent from a Wells Fargo account held in a fictitious
13 business name of Saker Enterprise Inc., “E Street Market,” to an account held in
the actual corporate name.

14 53. Saker controlled both these accounts, as well as a personal checking account
held at Arrowhead Credit Union.

15 54. Twenty-one (21) payments were made from the E Street Market account to
16 Nationstar DBA Mr. Cooper, the company apparently holding Saker’s personal
mortgage, totaling \$72,144.64 (*Id.*, p. 3).

17 55. Saker made twenty-three (23) cash withdrawals from the Wells Fargo E Street
18 Market business account and Arrowhead personal accounts totaling \$66,402.04.
Id., p. 2.

19 56. The number and amount of cash withdrawals made from the Saker Enterprise,
20 Inc. account remain unknown to Roberts and the Trustee.

21 57. Although Roberts reported the above-described situation to the Trustee, the
Trustee never requested that Saker produce the missing records.

22 58. At the May 17 341(a) Meeting, counsel for the US Trustee, Everett Green,
23 stated in essence, “Our office will submit a request for bank statements of
companies that you owned or operated.”

24 59. At that same meeting, Roberts asked Saker why he never produced the Saker
25 Enterprise bank statements. Saker responded, in essence, that he had provided his
26 state court attorney with all the documents available to him.

1 60. Roberts followed up by speaking with a paralegal for that state court attorney.
2 She checked the file and stated to Roberts that no statements had been provided to
the firm pursuant to the Saker Enterprise account.

3 61. In response to an email follow-up by Roberts, Mr. Green stated on June 6, “At
4 the moment, I am holding off on conducting discovery in the Saker case until the
5 court rules on the motion to dismiss. The debtor has raised various defenses and
rebuttals to your allegations. I will re-assess after the hearing.”

6 62. The “rebuttals” in Saker’s Opposition (main case DE #19) did not contradict
7 any of Roberts’ allegations above, other than stating that “E Street Market” was a
8 fictitious business name of Saker rather than that of his company (a statement
“supported” by a list of business license holders rather than fictitious business
name registrations; see below).

9 63. Saker’s Opposition was unaccompanied by any of the missing bank
10 statements, nor by a declaration in support.”

11 *Complaint*, DE #1, pp. 9-11.

12 Rather than attempting to waive this evidence away in a Motion to Dismiss, a litigant
13 interested in establishing his credibility and innocence of the charges in the Complaint would pay
14 a few dollars for another set of statements from his bank, and then file them as an exhibit to the
15 Motion, or as an exhibit to an Answer denying the allegations of the Complaint. Instead, the
16 Motion tries to simply wave away the allegations and hide behind the lack of action by the
17 Trustees.⁷ Wouldn’t it have made more sense to go ahead and DISPROVE the allegations? The
18
19

20
21 ⁷ Roberts remembers this Court’s comments – again from the hearing on Roberts’ Motion to
22 Dismiss the Debtor/Defendant’s *petition* – to the effect that the Trustees are disinterested parties
23 and so this Court trusts their professional judgment far more than the self-serving statements of
24 creditors or debtors. Roberts respectfully urges this Court to consider, first, that the Bankruptcy
25 Trustees are *very busy* and *are not paid much for each case*. Nor are they paid extra for
26 conducting a second Meeting of Creditors, and might well resent being “put on the spot” to do
so. On information and belief, Trustees are not paid a commission for urging the denial of a
discharge. The incentive structure drives them to dispose of each case as fast as possible, within
some bounds of discretion, which might vary considerably from Trustee to Trustee.

1 fact that the account is now closed provides little obstacle to obtaining the records.
2 Debtor/Defendant might have had to pay a little bit more for them than he would if the account
3 were still open and he had lost them. With his family allegedly giving him \$4000 per month to
4 live on when his home is completely paid for, he had plenty of money to pay for extra copies of
5 statements from a closed bank account.
6

7
8
9
10 Roberts has not been involved in many bankruptcy cases. However, in one of those few cases, a
11 complaint that Roberts submitted to the US Trustee regarding the apparent violation of law by a
12 Bankruptcy Trustee resulted in an apology and a promise of remedial training from the US
Trustee. Ex. 4.

13 Roberts suggests to this Court that a lack of action on the part of Bankruptcy Trustees in the face
14 of “smoke that might indicate fire” is more common – and bankruptcy debtors are getting away
15 with more misconduct – than this Court currently suspects.

16 The Court might not be aware that the Trustee’s Manual does *not* direct the Trustee to file a
17 nondischargeability action in every case just because the Trustee believes that such an action
would have merit:

18 “The Trustee testified that she has not objected to the Debtor’s discharge and she
19 has not joined this adversary proceeding. She explained that under the manual for
20 trustees she is required to undergo a cost-benefit analysis before pursuing a
21 nondischargeability action, including considering the expense of pursuing the
22 action, the *35 likelihood of success on the merits and whether such an action
would benefit creditors. She testified that this Chapter 7 case is an asset case, but
that after considering the cost-benefit factors as required by the trustees manual
she decided not to object to Debtor’s discharge.”

23 *In re Liechti*, United States Bankruptcy Court, D. Montana, December 16, 2015, 543 BR
24 26.

25 Thus, even in a case where assets were available for distribution to creditors, *the Trustee decided*
26 *not to litigate against a debtor he/she believed had violated bankruptcy law*, relying on the
27 official Trustee’s Manual cost-benefit directive to justify that decision.

1 At the Second Meeting of Creditors, which convened at noon on May 17, 2023,
2 Debtor/Defendant stated that he gave his state court attorney “everything.” Roberts had already
3 had many previous email and telephonic communications with legal assistant Shirley Ann
4 Claybon, “Office Manager” at The Carson Law Firm, Debtor/Defendant’s state court attorney.
5 After that last Meeting of Creditors, Roberts called Ms. Claybon again regarding the missing
6 bank statements. Claybon forwarded Roberts an email that she had stated by telephone contained
7 the last set of documents received by that office from or on behalf of Debtor/Defendant. Ex. 5.
8 See also the Complaint at paras. 59 and 60 on p. 10.
9
10

11 The email from Nakaa Clark, who had been telephonically introduced as
12 Debtor/Defendant’s daughter by the latter’s state court counsel to Roberts during a previous
13 conference call, was dated March 3, 2023. Claybon forwarded it to Roberts on May 17, at 2:35
14 PM, the same day as the Second Meeting. The documents pertained only to the foreclosure of the
15 E Street Market property; they included no bank statements. Roberts had already several times
16 before this brought the missing Saker Enterprise Inc. statements to the attention of that law
17 office. See Roberts’ Motion to Dismiss the Debtor/Defendant’s petition, Case #6:23-bk-10976-
18 SY, DE #17, pp. 8-13. The gap in the records production was obviously no mere oversight, but a
19 long-running deliberate act of “playing dumb” – one that persisted long after the filing of the
20 petition.
21
22

23
24 Even if Debtor/Defendant had followed the suggestion to file the missing statements as
25 an exhibit to the Motion in an attempt to prove his innocence, it would be too little, too late. The
26 violation justifying denial of discharge lies in the Debtor/Defendant’s failure and refusal to
27

1 provide the documents necessary for Roberts and the Trustee(s) to conduct a reasonably
2 thorough but *inexpensive* investigation *before* the deadline to file a 727 adversary proceeding.
3

4 Moreover, Roberts had no obligation to go beyond the Meetings of Creditors by
5 expending the resources necessary to examine the Debtor/Defendant and witnesses under Rule
6 2004 to justify his cause of action under 727 by proving that undisclosed assets existed, were
7 dissipated or moved outside the jurisdiction, or anything like that. The fact that the
8 Debtor/Defendant made it impossible for Roberts to form a reasonable conclusion as to whether
9 undisclosed assets existed, justifies the 727 claim.
10

11 Cause for denial of discharge under a 727 failure to preserve or produce relevant
12 documents cannot be remedied by a late production of the documents, regardless of what they
13 show. The concealment of *relevant records alone* justifies denial of discharge, without any need
14 to allege or prove actual concealment of assets that would have been available for distribution to
15 creditors.
16

17
18 In support of all the above arguments, Roberts provides the following case law citations:
19

20 “The court shall grant the debtor a discharge, unless ... the debtor has concealed,
21 destroyed, mutilated, falsified, or failed to keep or preserve any recorded
22 information, including books, documents, *190 records, and papers, from which
23 the debtor's financial condition or business transactions might be ascertained,
24 unless such act or failure to act was justified under all of the circumstances of the
25 case.” 11 U.S.C. § 727(a)(3). Section 727(a)(3) of the Bankruptcy Code does not
26 require that a debtor preserve and provide all financial records. *Caneva v. Sun*
Cmtys. Operating Ltd. P'ship (In re Caneva), 550 F.3d 755, 761 (9th Cir. 2008).
However, the debtor must provide written documentation which would allow
creditors to “ascertain his present financial condition and to follow his business
transactions for a reasonable period in the past.” *Rhoades v. Wikle*, 453 F.2d 51,

53 (9th Cir. 1971). An objector establishes a § 727(a)(3) prima facie case by showing that: (1) the debtor failed to maintain and preserve adequate records; and (2) this failure rendered it impossible to ascertain the debtor's financial condition and material business transactions. *In re Caneva*, 550 F.3d at 761.”

In re Wyatt, 625 B.R. 184 at 190-191 (2020), Bankr. L. Rep. P 83,604.

“[12] In this case, the bankruptcy court determined that the false statements and omissions in Debtors' petition were not material solely because Fogal did not show that the assets had sufficient value to increase the amount paid to creditors. *64 Based on the above authorities, we conclude that a statement or omission relating to an asset that is of little value or that would not be property of the estate can be material if it detrimentally affects the administration of the estate.

The bankruptcy court applied an incorrect interpretation of the materiality requirement of § 727(a)(4)(A).”

In re Wills, 243 B.R. 58 (1999) at 63-64, 43 Collier Bankr.Cas.2d 852, 35 Bankr.Ct.Dec. 121, Bankr. L. Rep. P 78,086.

“[S]ee also *In re Devers*, 759 F.2d at 754 (concluding that debtors could be denied discharge under § 727(a)(5) where they failed to offer a “satisfactory explanation” for the “disappearance” of a tractor they had owned that they did not produce for repossession). Once the creditor has made a prima facie case, the debtor must offer credible evidence regarding the disposition of the missing assets. *In re Devers*, 759 F.2d at 754.

In re Retz, 606 F.3d 1189 (2010) Bankr. L. Rep. P 81,776, 10 Cal. Daily Op. Serv. 6914, 2010 Daily Journal D.A.R. 8241.

A false statement or omission may be material even in the absence of direct financial prejudice to creditors. See *Weiner*, 208 B.R. at 72 [*Weiner v. Perry, Settles & Lawson (In re Weiner)*, 208 B.R. 69, 72 (9th Cir. BAP 1997)]; *Chalik*, 748 F.2d at 618 []; see also *Stanley v. Hoblitzell (In re Hoblitzell)*, 223 B.R. 211, 215–16 (Bankr.E.D.Cal.1998) (omission of an asset may be material despite the lack of prejudice to the estate or to creditors, “if it aids in understanding the debtor's financial affairs and transactions”); *Ford v. Ford (In re Ford)*, 159 B.R. 590, 593 (Bankr.D.Or.1993) (omission or false statement may be material if it concerns discovery of assets, materiality does not depend on the financial significance of the omitted assets, and detriment to creditors need not be shown); *Sergent v. Haverland (In re Haverland)*, 150 B.R. 768, 771 (Bankr.S.D.Cal.1993) (materiality of false oath does not depend on detriment to creditors).

1
2 *In re Roberts*, 331 B.R. 876 (2005), p. 6.

3 All that is required for a denial of discharge under the plain language of §
4 727(a)(4)(A) is a single false oath or account. *Smith v. Grondin (In re Grondin)*,
5 232 B.R. 274, 277 (1st Cir. BAP 1999) (citing *Schmitz*).

6 *In re Wright*, 364 B.R. 51 (2007), at 73.

7 Fraudulent intent may be inferred from a pattern of behavior. *Devers v. Sheridan*
8 (*In re Devers*), 759 F.2d 751, 754 (9th Cir.1985). The denial of discharge was
9 proper.

10 *In re Khalil*, 578 F.3d 1167 (2009), p. 2, 09 Cal. Daily Op. Serv. 10,852, 2009
11 Daily Journal D.A.R. 12,601

12 2. *Objection Based on Pretending the Debtor Is Allowed to Give a False Account As Long*
13 *As It Is Unsworn; and Based on Assertions Outside the Complaint*

14 **MOTION:** “Plaintiff’s allegations that Defendant made false statements in his
15 opposition to Robert’s [*sic*] Motion to Dismiss is unfounded. Debtor’s opposition to
16 Roberts [*sic*] motion to dismiss was not accompanied by a sworn declaration. Plaintiff
17 asserts that Defendant failed to disclose that E Street Market was a partnership with his
18 son. To the best of Debtor’s knowledge and recollection, he was and acted as the only
19 owner of E Street Market. While technically Debtor and his son were partners in name,
20 the records and bank statements show all transactions were between Debtor and E Street
21 Market.”

22 **RESPONSE:** First, the language of the statute is not restricted to a false *oath*; a false *account*
23 *presented by the Debtor/Defendant as part of the bankruptcy lead case OR ensuing litigation*,
24 even if unsworn, is sufficient to deny discharge.

25 Second, the last sentence is disingenuous. As clearly alleged (and supported by exhibits),
26 numerous transactions were between an account held in the name of E Street Market and another
27 account held in the name of Saker Enterprise Inc. *No statements from the latter account were*

1 *provided*. Cash withdrawals or transfers to overseas accounts from that account could have been
2 made so as to squirrel away assets and/or remove them from the jurisdiction.
3

4 To belabor what might be obvious, disclosed transfers to an account where no statements
5 were provided allow for the debtor to have withdrawn significant amounts of cash and squirreled
6 them away, out of view and the reach of creditors and the Trustee. Again, that *concealment* is the
7 violation, regardless of whether any such “squirreling away” actually occurred, because the
8 concealment made it impossible (or at least would have required a much more resource-intensive
9 Rule 2004 examination with subpoenas) under the circumstances to determine whether any such
10 squirreling away had occurred.
11

12
13 **D. CONCLUSION**

14 The Complaint is nowhere near deficient enough as to make amendment futile. Leave to
15 amend should be granted.
16

17 Roberts requests at least eight weeks from the date of the Order granting leave as the
18 deadline to file an Amended Complaint, to provide time to obtain transcripts and other evidence,
19 in hopes of staving off another Motion to Dismiss from the Debtor/Defendant.
20

21 Respectfully submitted this 23rd day of October, 2023.

22  Gregg Roberts
23
24
25
26
27

Gregg Roberts
43430 E Florida Ave Ste #F-293
Hemet CA 92544
951-330-4450
Assignee of Record and Judgment Creditor, Pro Se

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – RIVERSIDE DIVISION

In re Jihad Saker,
Debtor

Gregg Roberts,
Plaintiff,
v.
Jihad Saker,
Defendant

Main Case #6:23-bk-10976-SY
Chapter 7
Adv. Proc. Case #6:23-ap-01055-SY

DECLARATION OF GREGG ROBERTS

I am over the age of 18 years and competent to make this Declaration. I have personal knowledge of the matters herein, other than those indicated as being known by information and belief, and I would and could competently testify about them if called to do so.

All factual claims in the accompanying Response are true and correct, to the best of my knowledge, information, and belief.

DECLARATION OF GREGG ROBERTS

1 All exhibits to this Motion are true and correct copies of the documents that they purport
2 to be.
3

4 All the words transcribed from any proceeding recordings are accurate to the best of my
5 knowledge, information, and belief.
6

7 I certify (or declare) under penalty of perjury under the laws of the State of California
8 that the foregoing is true and correct.
9

10 Signed at Hemet, California, this 23rd day of October, 2023.

11 Gregg Roberts
12

13 Gregg Roberts
14
15
16
17
18
19
20
21
22
23
24
25
26

27 DECLARATION OF GREGG ROBERTS
28

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Robert B. Gibson, Esq. (SBN: 162347) GIBSON & HUGHES 1551 N. Tustin Avenue Suite 530 Santa Ana, CA 92705 TELEPHONE NO: (714) 547-8377 FAX NO. (Optional): (714) 547-8378 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiffs</p>	<p><small>FOR COURT USE ONLY</small></p> <p>FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT</p> <p>MAY 10 2016</p> <p>BY <u><i>Victoria Sanchez</i></u> VICTORIA SANCHEZ, DEPUTY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 W. Third Street MAILING ADDRESS: 247 W. Third Street CITY AND ZIP CODE: San Bernardino, CA 92415-0240 BRANCH NAME: CENTRAL COURT</p>	<p>8435 - 160570-0877</p>
<p>PLAINTIFF: DEBBIE ANN LAWLER, CYNTHIA K. JOHNSON</p> <p>DEFENDANT: AHALENA HOOKAH LOUNGE, TRAVON LEWIS STOKES, VALMOR LIMITED, L.P., AUGUSTA DEVELOPMENT CORPORATION, NAI CAPITAL, INC., NAI CAPITAL MANAGEMENT SERVICES, INC., ARGENT RETAIL ADVISORS, <i>JIHAD SAKER</i> <input checked="" type="checkbox"/> DOES 1 TO 100 inclusive</p>	
<p>COMPLAINT—Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input checked="" type="checkbox"/> OTHER (specify): General Negligence <input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death Premises Liability <input type="checkbox"/> Personal Injury <input type="checkbox"/> Other Damages (specify):</p>	
<p>Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited</p>	<p>CASE NUMBER: CIVDS1607235</p>

1. Plaintiff (name or names): **DEBBIE ANN LAWLER, CYNTHIA K. JOHNSON**

alleges causes of action against defendant (name or names): **AHALENA HOOKAH LOUNGE, TRAVON LEWIS STOKES, VALMOR LIMITED, L.P., AUGUSTA DEVELOPMENT CORPORATION, NAI CAPITAL, INC., NAI CAPITAL MANAGEMENT SERVICES, INC., ET AL**

2. This pleading, including attachments and exhibits, consists of the following number of pages:

3. Each plaintiff named above is a competent adult

a. ☐ except plaintiff (name):

- (1) ☐ a corporation qualified to do business in California
- (2) ☐ an unincorporated entity (describe):
- (3) ☐ a public entity (describe):
- (4) ☐ a minor ☐ an adult
 - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
- (5) ☐ other (specify):

b. ☐ except plaintiff (name):

- (1) ☐ a corporation qualified to do business in California
- (2) ☐ an unincorporated entity (describe):
- (3) ☐ a public entity (describe):
- (4) ☐ a minor ☐ an adult
 - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
- (5) ☐ other (specify):

Ex. 1, Page 1 of 6

☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

SHORT TITLE: LAWLER, et al. v., AHALENA HOOKAH LOUNGE, et al.

CASE NUMBER:

4. ☐ Plaintiff (name):

is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

a. ☒ except defendant (name): AHALENA HOOKAH LOUNGE(1) ☒ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):c. ☒ except defendant (name): AUGUSTA DEVELOPMENT CORPORATION(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):b. ☒ except defendant (name): VALMOR LIMITED, L. P.(1) ☒ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):d. ☒ except defendant (name): NAI CAPITAL, INC.(1) ☒ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):☒ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. ☒ Doe defendants (specify Doe numbers): 1 TO 100 were the agents or employees of other named defendants and acted within the scope of that agency or employment.b. ☒ Doe defendants (specify Doe numbers): 1 TO 100 are persons whose capacities are unknown to plaintiff.7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

a. ☐ at least one defendant now resides in its jurisdictional area.b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.d. ☐ other (specify):9. ☐ Plaintiff is required to comply with a claims statute, anda. ☐ has complied with applicable claims statutes, orb. ☐ is excused from complying because (specify):

Ex. 1, Page 2 of 6

SHORT TITLE: LAWLER, et al. v., AHALENA HOOKAH LOUNGE, et al.

CASE NUMBER:

CIVDS1607235

10. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- a. ☐ Motor Vehicle
- b. ☒ General Negligence
- c. ☒ Intentional Tort
- d. ☐ Products Liability
- e. ☒ Premises Liability
- f. ☒ Other (*specify*): Wrongful Death

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☐ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☐ property damage
- f. ☒ loss of earning capacity
- g. ☒ other damage (*specify*): non-economic damages.

12. ☒ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☒ as follows:

Debbie Ann Lawler -- Surviving mother of decedents, David Dywane Lawler and Terry Lyn Freeman, Jr.

Cynthia K. Johnson -- surviving mother of decedent, Kevin Lamont Johnson

Plaintiffs also lost love, comfort, care, assistance, protection, affection and moral support

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (*in cases for personal injury or wrongful death, you must check (1)*):

- (1) ☒ according to proof
- (2) ☐ in the amount of: \$ 0.00

15. ☒ The paragraphs of this complaint alleged on information and belief are as follows (*specify paragraph numbers*):

All paragraphs of this complaint.

Date: May 9, 2016

Robert B. Gibson
(TYPE OR PRINT NAME)

Ex. 1, Page 3 of 6

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE: LAWLER, et al. v., AHALENA HOOKAH LOUNGE,
et al.

CASE NUMBER:

CIVDS1607235

ATTACHMENT (Number): 5

(This Attachment may be used with any Judicial Council form.)

5.

NAI CAPITAL MANAGEMENT SERVICES, INC., a business organization, form unknown.

ARGENT RETAIL ADVISORS, a business organization, form unknown.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Ex. 1, Page 4 of 6

Page ____ of ____

(Add pages as required)

SHORT TITLE: LAWLER, et al. v., AHALENA HOOKAH LOUNGE, et
al.

CASE NUMBER:

CIVDS1607235

FIRST CAUSE OF ACTION—General Negligence
(number)

Page 4

ATTACHMENT TO ☐ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): DEBBIE ANN LAWLER, CYNTHIA K. JOHNSON

alleges that defendant (name): AHALENA HOOKAH LOUNGE, TRAVON LEWIS STOKES, VALMOR
LIMITED, L.P., AUGUSTA DEVELOPMENT CORPORATION, NAI CAPITAL, INC., NAI
CAPITAL MANAGEMENT SERVICES, INC., ARGENT RETAIL ADVISORS, et al.

☒ Does 1 to 100 inclusive

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant
negligently caused the damage to plaintiff

on (date): or about May 16, 2014

at (place): or near Ahalena Hookah Lounge located at 1983 Diners Ct in the
City of San Bernardino, County of San Bernardino

(description of reasons for liability):

Decedents', David Dywane Lawler, Terry Lyn Freeman, Jr. and Kevin Lamont
Johnson, were patrons at Ahalena Hookah Lounge on May 16, 2014. Decedents were
among 60 to 100 people hanging out in front of Ahalena Hookah Lounge after 4:00
a.m., in the parking lot.

Defendant, Travon Lewis Stokes, approached the decedents and fatally shot them.
The negligence of security measures allowed the crowd to stay in the parking lot
instead of dispersing the crowd.

As the proximate result of the negligence of defendants, decedents were shot and
killed. The defendants failed to maintain, secure and staff the property, and
failed to adequately protect its patrons.

The negligence of these defendants was a substantial factor in the death of
David Dywane Lawler, Terry Lyn Freeman, Jr., and Kevin Lamont Johnson.

Ex. 1, Page 5 of 6

SHORT TITLE: LAWLER, et al. v., AHALENA HOOKAH LOUNGE, et al.

CASE NUMBER:

CIVDS1607235

SECOND

(number)

CAUSE OF ACTION—Premises Liability

Page 5

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

Prem.L-1. Plaintiff (name): DEBBIE ANN LAWLER, CYNTHIA K. JOHNSON

alleges the acts of defendants were the legal (proximate) cause of damages to plaintiff.

On (date): May 16, 2016

plaintiff was injured on the following premises in the following

fashion (description of premises and circumstances of injury):

at or near Ahalena Hookah Lounge located at 1983 Diner Court in the City of San Bernardino, County of San Bernardino, decedents, David Dywane Lawler, Terry Lyn Freeman, Jr., and Kevin Lamont Johnson were shot and killed.

Prem.L-2. ☒ **Count One--Negligence** The defendants who negligently owned, maintained, managed and operated the described premises were (names): AHALENA HOOKAH LOUNGE, TRAVON LEWIS STOKES, JIHAD SAKER, VALMOR LIMITED, L.P., AUGUSTA DEVELOPMENT CORPORATION, NAI CAPITAL, INC., NAI CAPITAL MANAGEMENT SERVICES, INC., ARGENT RETAIL ADVISORS

☒ Does _____ to _____

Prem.L-3. ☐ **Count Two--Willful Failure to Warn** [Civil Code section 846] The defendant owners who willfully or maliciously failed to guard or warn against a dangerous condition, use, structure, or activity were (names):

☐ Does _____ to _____

Plaintiff, a recreational user, was ☐ an invited guest ☐ a paying guest.

Prem.L-4. ☐ **Count Three--Dangerous Condition of Public Property** The defendants who owned public property on which a dangerous condition existed were (names):

☐ Does _____ to _____

a. ☐ The defendant public entity had ☐ actual ☐ constructive notice of the existence of the dangerous condition in sufficient time prior to the injury to have corrected it.

b. ☐ The condition was created by employees of the defendant public entity.

Prem.L-5. a. ☒ **Allegations about Other Defendants** The defendants who were the agents and employees of the other defendants and acted within the scope of the agency were (names): EACH DEFENDANT AS TO THE OTHER.

☒ Does _____ to _____

b. ☒ The defendants who are liable to plaintiffs for other reasons and the reasons for their liability are ☐ described in attachment Prem.L-5.b ☒ as follows (names): AHALENA HOOKAH LOUNGE, TRAVON LEWIS STOKES, JIHAD SAKER, VALMOR LIMITED, L.P., AUGUSTA DEVELOPMENT CORPORATION, NAI CAPITAL, INC., NAI CAPITAL MANAGEMENT SERVICES, INC., ARGENT RETAIL ADVISORS

Ex. 1, Page 6 of 6

JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Robert B. Gibson, Esq. SBN: 162347 GIBSON & HUGHES 1851 E. First Street, Suite 650, SANTA ANA, CA 92705 TELEPHONE NO.: 714-547-8377 FAX NO. (Optional): 714-547-8378 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Debbie Lawler		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT APR 19 2019 BY <u>BREND A MATSUMURA</u> , DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: 247 West Third Street CITY AND ZIP CODE: San Bernardino, 92415-0210 BRANCH NAME: San Bernardino District - Civil Division		
PLAINTIFF: Debbie Ann Lawler, Cynthia K. Johnson DEFENDANT: Ahalena Hookah Lounge, et al.		
JUDGMENT <input type="checkbox"/> By Clerk <input checked="" type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> On Stipulation <input type="checkbox"/> Defendant Did Not Appear at Trial		CASE NUMBER: CIVDS1607235

JUDGMENT

1. ☒ **BY DEFAULT**

- Defendant was properly served with a copy of the summons and complaint.
- Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
- Defendant's default was entered by the clerk upon plaintiff's application.
- ☐ **Clerk's Judgment** (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
- ☒ **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
 - ☐ plaintiff's testimony and other evidence.
 - ☒ plaintiff's written declaration (Code Civ. Proc., § 585(d)).

2. ☐ **ON STIPULATION**

- Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
- ☐ the signed written stipulation was filed in the case.
- ☐ the stipulation was stated in open court ☐ the stipulation was stated on the record.

3. ☐ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.

- The case was tried on (date and time):
before (name of judicial officer):
- Appearances by:

<input type="checkbox"/> Plaintiff (name each):	<input type="checkbox"/> Plaintiff's attorney (name each):
(1)	(1)
(2)	(2)
<input type="checkbox"/> Continued on Attachment 3b.	
<input type="checkbox"/> Defendant (name each):	<input type="checkbox"/> Defendant's attorney (name each):
(1)	(1)
(2)	(2)
<input type="checkbox"/> Continued on Attachment 3b.	
- ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
- ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

PLAINTIFF:Debbie Ann Lawler, Cynthia K. Johnson	CASE NUMBER: CIVDS1607235
DEFENDANT:Ahalena Hookah Lounge, et al.	

JUDGMENT IS ENTERED AS FOLLOWS BY: ☒ THE COURT ☐ THE CLERK

4. ☐ **Stipulated Judgment.** Judgment is entered according to the stipulation of the parties.

5. **Parties.** Judgment is

a. ☒ for plaintiff (name each): Cynthia K. Johnson

c. ☐ for cross-complainant (name each):

and against defendant (names): Jihad Saker dba Ahalena Hookah Lounge and Argent Retail Advisors.

and against cross-defendant (name each):

☐ Continued on Attachment 5a.

☐ Continued on Attachment 5c.

b. ☐ for defendant (name each):

d. ☐ for cross-defendant (name each):

6. **Amount.**

a. ☒ Defendant named in item 5a above must pay plaintiff on the complaint:

c. ☐ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) <input checked="" type="checkbox"/> Damages	\$	1,000,000.00
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	1,500,000.00
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input checked="" type="checkbox"/> Costs	\$	5,251.25
(5) <input type="checkbox"/> Other (specify):	\$	
(6) TOTAL	\$	1,505,251.25 1,005,251.25

(1) <input type="checkbox"/> Damages	\$	
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other (specify):	\$	
(6) TOTAL	\$	

b. ☐ Plaintiff to receive nothing from defendant named in item 5b.
☐ Defendant named in item 5b to recover costs \$
☐ and attorney fees \$

d. ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.
☐ Cross-defendant named in item 5d to recover costs \$
☐ and attorney fees \$

7. ☐ Other (specify):

Date: APR 19 2019



MICHAELA A. SACHS JUDICIAL OFFICER

Date: ☐ Clerk, by _____, Deputy

(SEAL)


CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by _____, Deputy

JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Robert B. Gibson, Esq. SBN: 162347 GIBSON & HUGHES 1851 E. First Street, Suite 650, SANTA ANA, CA 92705 TELEPHONE NO.: 714-547-8377 FAX NO. (Optional): 714-547-8378 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Debbie Lawler		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO SAN BERNARDINO CIVIL DIVISION MAY 13 2019 BY  VERONICA GONZALEZ, DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: 247 West Third Street CITY AND ZIP CODE: San Bernardino, 92415-0210 BRANCH NAME: San Bernardino District - Civil Division		
PLAINTIFF: Debbie Ann Lawler, Cynthia K. Johnson DEFENDANT: Ahalena Hookah Lounge, et al.		
JUDGMENT <input type="checkbox"/> By Clerk <input checked="" type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> On Stipulation <input type="checkbox"/> Defendant Did Not Appear at Trial		CASE NUMBER: CIVDS1607235

JUDGMENT

1. ☒ **BY DEFAULT**
 - a. Defendant was properly served with a copy of the summons and complaint.
 - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
 - c. Defendant's default was entered by the clerk upon plaintiff's application.
 - d. ☐ **Clerk's Judgment** (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
 - e. ☒ **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
 - (1) ☐ plaintiff's testimony and other evidence.
 - (2) ☒ plaintiff's written declaration (Code Civ. Proc., § 585(d)).
2. ☐ **ON STIPULATION**
 - a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
 - b. ☐ the signed written stipulation was filed in the case.
 - c. ☐ the stipulation was stated in open court ☐ the stipulation was stated on the record.
3. ☐ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
 - a. The case was tried on (date and time):
before (name of judicial officer):
 - b. Appearances by:

<input type="checkbox"/> Plaintiff (name each):	<input type="checkbox"/> Plaintiff's attorney (name each):
(1)	(1)
(2)	(2)
<input type="checkbox"/> Continued on Attachment 3b.	
<input type="checkbox"/> Defendant (name each):	<input type="checkbox"/> Defendant's attorney (name each):
(1)	(1)
(2)	(2)
<input type="checkbox"/> Continued on Attachment 3b.	
 - c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
 - d. ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

PLAINTIFF: Debbie Ann Lawler, Cynthia K. Johnson	CASE NUMBER: CIVDS1607235
DEFENDANT: Ahalena Hookah Lounge, et al.	

JUDGMENT IS ENTERED AS FOLLOWS BY: ☒ THE COURT ☐ THE CLERK

4. ☐ **Stipulated Judgment.** Judgment is entered according to the stipulation of the parties.

5. **Parties.** Judgment is

a. ☒ for plaintiff (*name each*): Debbie Ann Lawler

c. ☐ for cross-complainant (*name each*):

and against defendant (*names*): Jihad Saker dba Ahalena
Hookah Lounge and Argent Retail Advisors

and against cross-defendant (*name each*):

☐ Continued on Attachment 5a.

☐ Continued on Attachment 5c.

b. ☐ for defendant (*name each*):

d. ☐ for cross-defendant (*name each*):

6. **Amount.**

a. ☒ Defendant named in item 5a above must
pay plaintiff on the complaint:

c. ☐ Cross-defendant named in item 5c above must pay
cross-complainant on the cross-complaint:

(1)	<input checked="" type="checkbox"/> Damages	\$	1,000,000.00
(2)	<input type="checkbox"/> Prejudgment interest at the annual rate of	\$	
		%	
(3)	<input type="checkbox"/> Attorney fees	\$	
(4)	<input type="checkbox"/> Costs	\$	
(5)	<input type="checkbox"/> Other (<i>specify</i>):	\$	
(6)	TOTAL	\$	1,000,000.00

(1)	<input type="checkbox"/> Damages	\$	
(2)	<input type="checkbox"/> Prejudgment interest at the annual rate of	\$	
		%	
(3)	<input type="checkbox"/> Attorney fees	\$	
(4)	<input type="checkbox"/> Costs	\$	
(5)	<input type="checkbox"/> Other (<i>specify</i>):	\$	
(6)	TOTAL	\$	

b. ☐ Plaintiff to receive nothing from defendant
named in item 5b.
☐ Defendant named in item 5b to recover
costs \$
☐ and attorney fees \$

d. ☐ Cross-complainant to receive nothing from
cross-defendant named in item 5d.
☐ Cross-defendant named in item 5d to recover
costs \$
☐ and attorney fees \$

7. ☐ Other (*specify*):

Date: MAY 13 2019



MICHAELA A. SACHS

JUDICIAL OFFICER

Date:

☐ Clerk, by _____, Deputy

(SEAL)

CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by _____, Deputy

1 well.

2 Q Okay. So you get to the Hookah Lounge. And do you see
3 them? Do you see Alex? Do you see the rest of the people?

4 A When I pulled up, I noticed their car. We pulled in, and
5 I backed into the, I believe, the first stall to my left side
6 as soon as I pulled into the parking lot, and they were across
7 the way in the other stalls.

8 Q Okay. Do you remember if you parked with your --
9 backwards into the stall so you could drive straight out or did
10 you park in the stall? I normally do it where I just pull in.

11 A I backed in.

12 Q You backed into the stall?

13 A Yes.

14 Q Okay. When you got out of the car, what did you do?

15 A We got out of the car. I went to my trunk and I grabbed
16 the gun and put it in my waistband, and I walked across to
17 where Alex and Alfred were.

18 Q Okay. Now, we talked about it a little bit. Why did you
19 get the gun?

20 A As I said, I always kept it on me for my protection after
21 my friend, and I also knew that I was gonna be able to walk
22 into the Hookah Lounge without being patted down.

23 Q Because why?

24 A Because Suav's family owned the place. He came out there
25 to meet us and basically walked us in, and I had a bottle of
26 alcohol with us. He took that in.

27 Q What type of alcohol did you have with you?

28 A Serrat.



U.S. Department of Justice

***United States Trustee
Central District of California***

411 W. 4th Street, Suite 7160
Santa Ana, CA 92701
Telephone: (714) 338-3400
Facsimile: (714) 338-3421

May 3, 2022

Gregg Roberts
Legal Support Services of Southern California
43430 E. Florida Ave. #F-293
Hemet, CA 92544

Re: *In re Louie Russell Vega and Patricia Anne Vega*, Case No. 8:21-bk-12746-ES

Dear Mr. Roberts,

I am writing in response to your faxed communication dated January 28, 2022, concerning the conduct of Weneta Kosmala, Chapter 7 trustee, and her administration of the bankruptcy case of Louie Russell Vega and Patricia Anne Vega Duane. The United States Trustee Program is the component of the Department of Justice responsible for supervising the administration of bankruptcy cases and private trustees under title 11 of the United States Code. As part of the Program's supervision, the United States Trustee independently reviews public complaints concerning trustee's conduct and evaluates whether appropriate remedial action should be taken. To respond to your complaint, the United States Trustee reviewed the record of this case, including, but not limited to, information you provided, the court's docket and legal pleadings filed in the case and the related adversary proceeding, official recordings of the first meeting of creditors under §341 of the Bankruptcy Code, and information received from trustee Kosmala and Debtors' counsel, Christopher Walker, concerning facts pertinent to the issues you raised.

On November 19, 2021, Louie Russell Vega and Patricia Anne Vega Duane (collectively, the "Debtors") filed a voluntary petition under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Central District of California, Santa Ana division (the "Bankruptcy Case"). The Bankruptcy Case was assigned case no. 8:21-bk-12746-ES. Upon the filing of the petition, Weneta Kosmala was appointed as the interim Chapter 7 trustee. Since no trustee was elected at the Debtors' initial meeting of creditors, trustee Kosmala became the permanent trustee for the Bankruptcy Case.

Your complaint raises concerns about trustee Kosmala's conduct in administering the Bankruptcy Case. Specifically, you allege that she scheduled and then cancelled a continued §341

meeting of creditors without providing you with documentation requested or the opportunity to participate in the continued meeting. You also advised us that cancellation of the continued §341 meeting shortened the time to object to exemptions which derogated your ability to analyze and possibly object to the Debtors' scheduled exemptions. You further indicate that Ms. Kosmala did not comply with your request for certain documents that the Debtors provided to her.

The initial §341 meeting in the Bankruptcy Case was duly noticed and conducted by trustee Kosmala via Zoom on December 22, 2021. During the initial meeting, the trustee examined the Debtors and requested documents, and then continued the meeting to January 20, 2022. Notice of the continued meeting appears on the court docket. (docket nos. 10 and 11) The §341 recording for the initial meeting indicates that you spoke with trustee Kosmala after she had concluded the meeting and advised her that you were present but did not ask questions because she ended the meeting without asking if there were creditors present with questions. The recording also indicates that you told trustee Kosmala about several potential estate assets you wanted to investigate. You advised her that you wanted to confirm with your sources before conducting a Rule 2004 exam of the Debtors and trustee Kosmala asked you to let her know the results of your investigation. On January 19, 2022 (the day before the continued meeting), trustee Kosmala's administrator notified Debtors' counsel that the trustee had no further questions for the Debtors and that the continued §341 meeting set for January 20, 2022, was cancelled.

Ms. Kosmala filed a no asset report on January 24, 2022. The Debtors' counsel has advised us that you told him that you intended to conduct a Rule 2004 exam of the Debtors in early February but never obtained an order authorizing the exam and it did not go forward. Instead, you filed an action seeking an exception of discharge of your debt under Bankruptcy Code §523 on February 22, 2022, and that action is pending (*Gregg Roberts v. Louie R. Vega and Patricia Anne Vega*, 8:22-ap-01023).

Among the documents you provided to us are several emails from you to trustee Kosmala's administrator and Debtors' counsel (dated 12/27/21, 1/12/22 & 1/18/22) indicating that you intended to participate in the second §341 meeting and also planned to conduct a Rule 2004 exam. There is also an email (dated 12/22/21) from trustee Kosmala's administrator acknowledging that the §341 meeting was continued for two reasons: to give the Debtors time to provide documents and due to difficulties with the Zoom technology, the initial meeting was concluded before the trustee and you were aware of each other. The trustee's administrator specified in his email that "as such, [you] will also have an opportunity to appear on January 20, 2022, to question the Debtor re potential assets (if any)." The January 21, 2022, email, which you sent to trustee Kosmala's administrator Mr. Fitzgerald, asked for reinstatement of a continued §341 meeting and whether the trustee received documents confirming the Debtors' rent, which can be shared with you. You indicated that the Debtors would not provide information regarding rent and an inheritance directly to you. On the same date Mr. Fitzgerald responded to you via email, indicating that he was forwarding your request to the trustee.

Trustee Kosmala advised us that she confirmed that there was no basis to administer non-exempt property based on her investigation, which included a review of information she received from the Debtors. Her investigation supported a conclusion that non-exempt assets were valued at \$3,281.47, which would not provide a meaningful distribution to creditors in light of


administrative costs; it also appears that the Debtors only scheduled a \$20,000 wildcard exemption and had the ability to amend their schedules to increase this to \$30,825 under section 703.140(b)(5) of the California Code of Civil Procedure if their assets were more valuable than scheduled.

Conclusion

Our investigation confirms that trustee Kosmala properly examined Debtors' claimed exemptions before filing a no-asset report and properly concluded that there was no basis for a challenge that could result in assets that could be distributed to creditors. However, our review leads us to believe that, under the circumstances of this matter, trustee Kosmala should have provided you with documents she had received from the Debtors and the opportunity to examine the Debtors at a continued §341 meeting of creditors. Accordingly, we will carefully review her administrative procedures to assure that this practice does not continue. With respect to your ability to conduct discovery to support your §523 action, the Bankruptcy Rules allow you to conduct discovery and obtain the information you need directly from the Debtors.

Thank you for bringing this matter to our attention. My staff and I will continue to monitor the Bankruptcy Case.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter C. Anderson", written over a horizontal line.

Peter C. Anderson

United States Trustee for Region 16

Subject: Fwd: Jihad saker

From: Carson Firm <thecarsonlaw@gmail.com>

Date: 5/17/2023, 2:35 PM

To: Gregg Roberts <gregg@legalsupport-sc.com>

Warm Regards,

Shirley Ann Claybon

Office Manager

The Carson Law Firm

(951) 384-5860 | Thecarsonlaw@gmail.com

3890 11th Street Suite 103 Riverside CA 92501

WARNING: This e-mail is covered by the Electronic Communications Privacy Act, 18 United States Code, §§2510-2521 and is legally privileged. It contains information from the The Carson Law Firm, which may be privileged, confidential and exempt from disclosure under applicable law. Dissemination or copying of this by anyone other than the addressee or the addressee's agent is strictly prohibited. If this electronic transmission is received in error, please notify The Carson Law Firm at (951)384-6850. Thank you.

Create your own [email signature](#)

----- Forwarded message -----

From: Nakaa Clark <clark909@icloud.com>

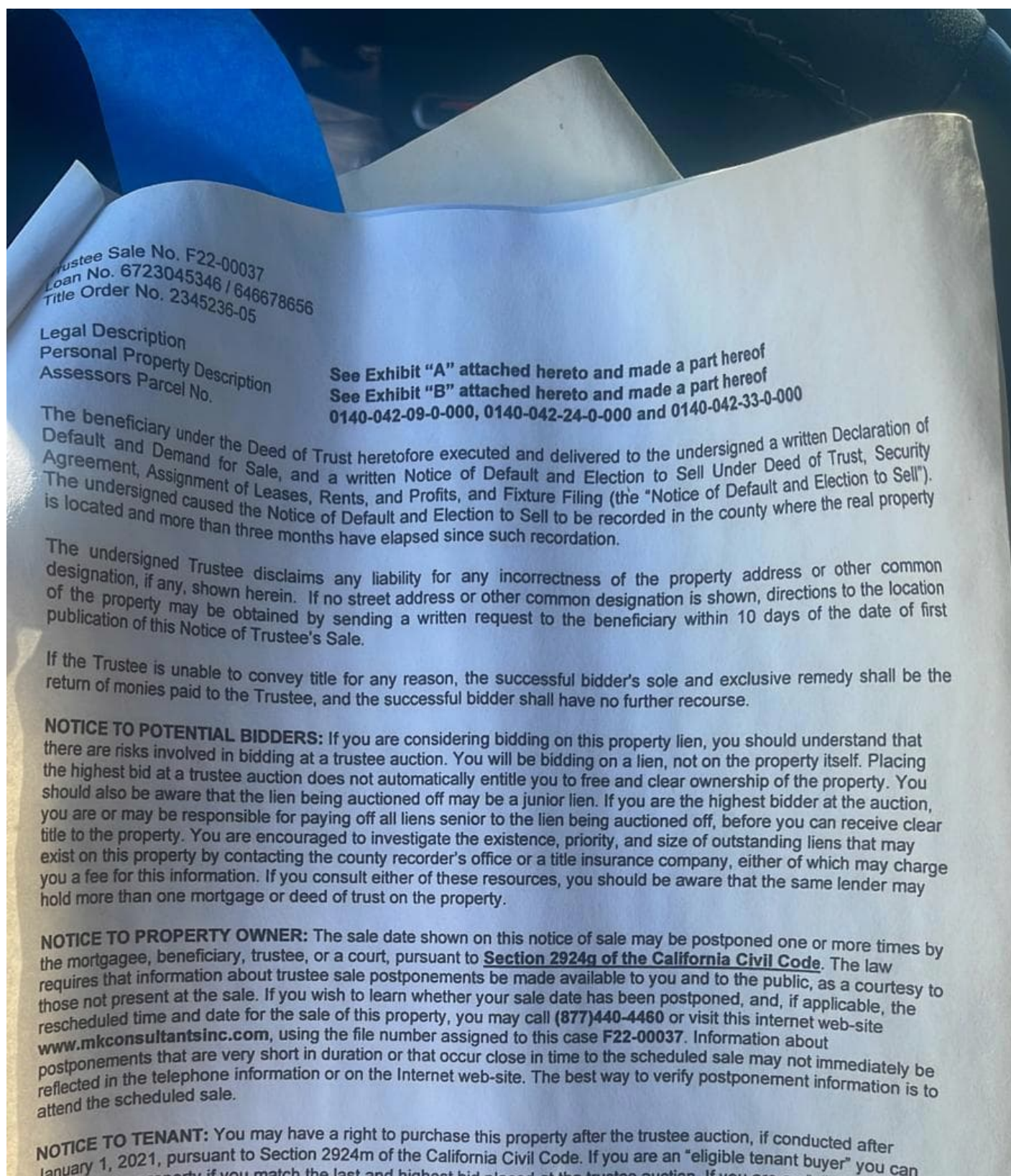
Date: Fri, Mar 3, 2023 at 1:48 PM

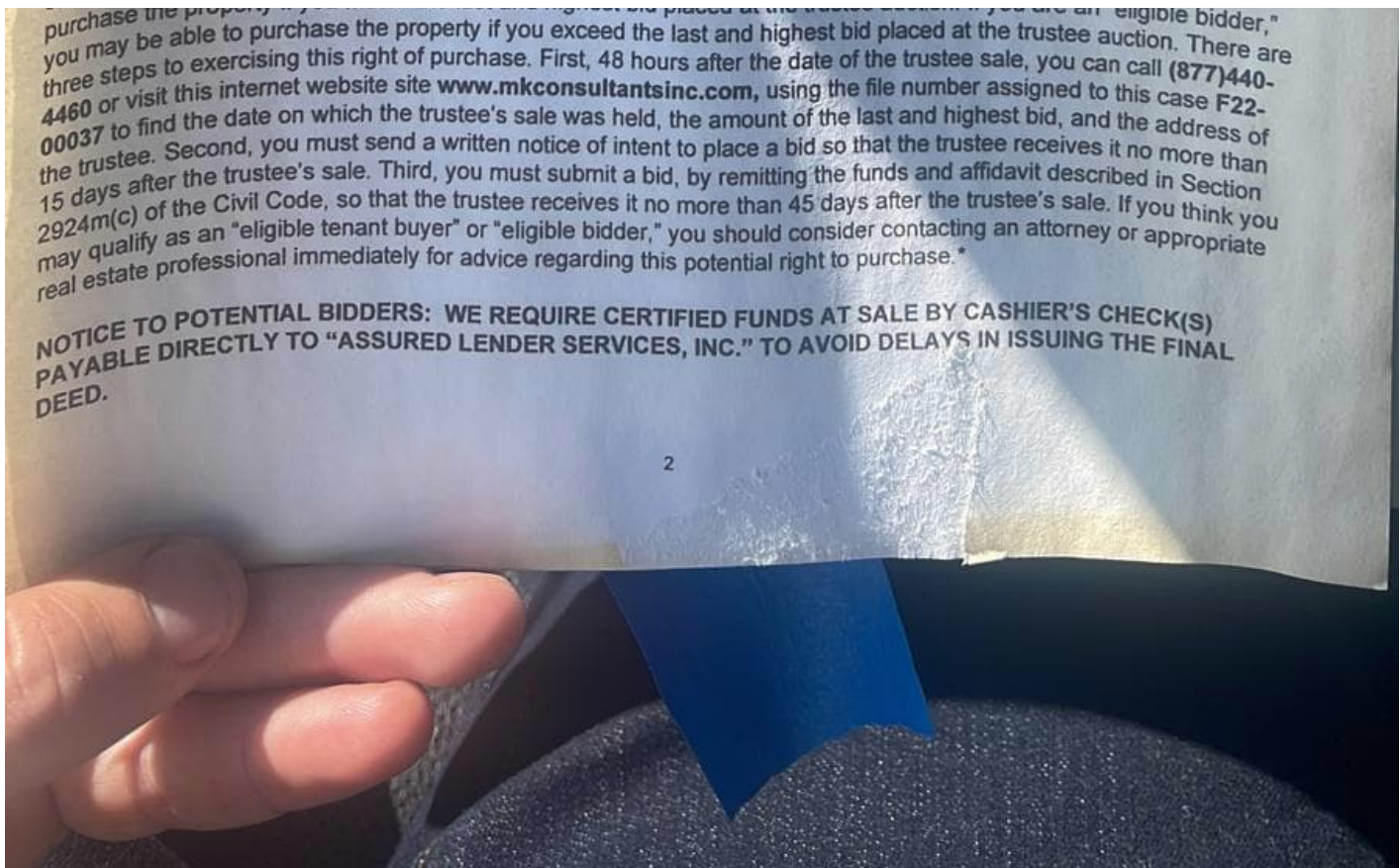
Subject: Jihad saker

To: Carson Firm <thecarsonlaw@gmail.com>

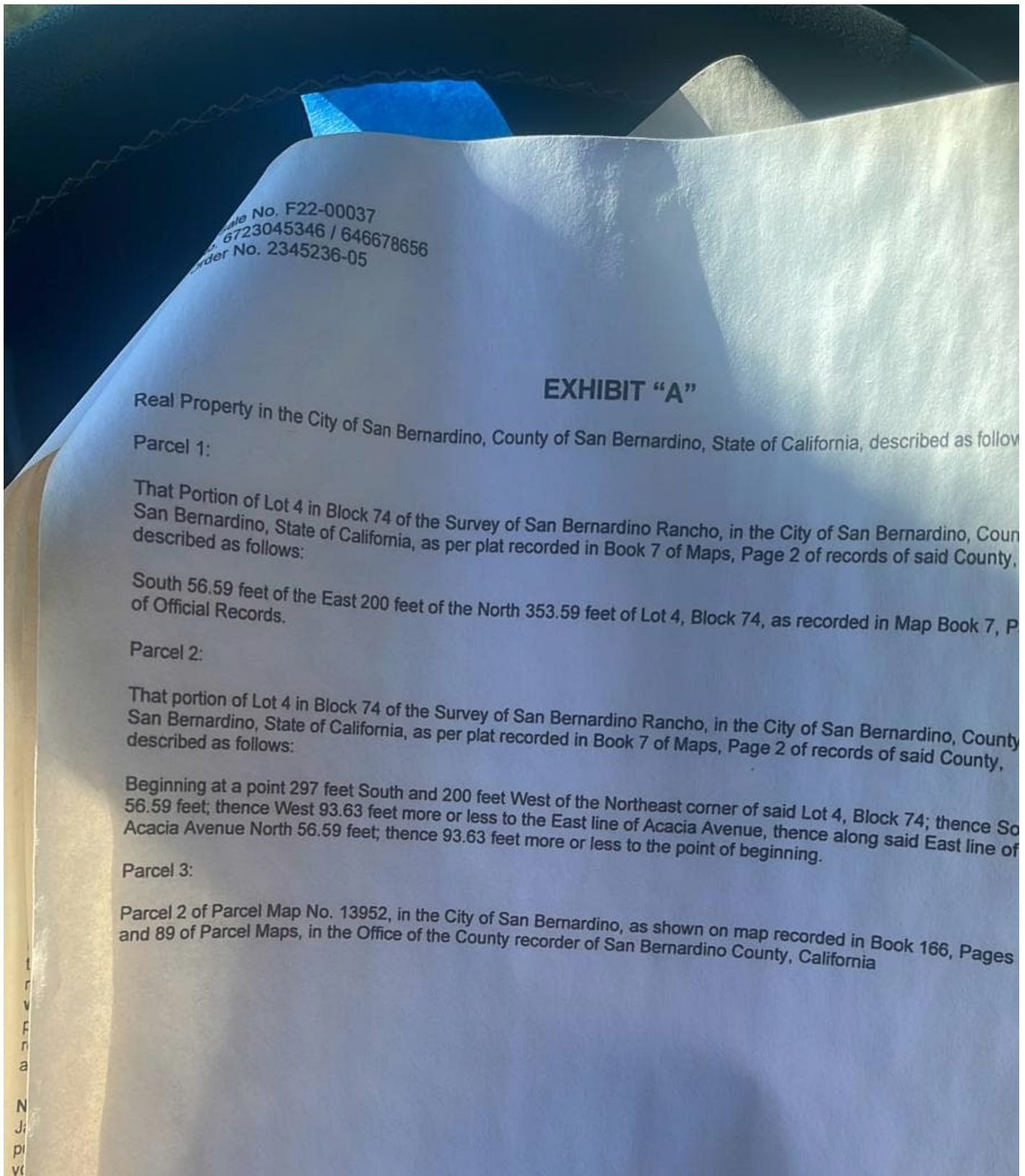
Sent from my iPhone

— image0.jpeg —





NOTICE TO POTENTIAL BIDDERS: WE REQUIRE CERTIFIED FUNDS AT SALE BY CASHIER'S CHECK(S) PAYABLE DIRECTLY TO "ASSURED LENDER SERVICES, INC." TO AVOID DELAYS IN ISSUING THE FINAL DEED.





—image2.jpeg—

Sale No. F22-00037
No. 6723045346 / 646678656
Order No. 2345236-05

THE PROPERTY COVERED IN THIS ACTION INCLUDES ALL SUCH REAL PROPERTY AND THE PERSONAL PROPERTY IN WHICH THE BENEFICIARY HAS A SECURITY INTEREST DESCRIBED IN EXHIBITS "A" AND "B" ATTACHED HERETO, RESPECTIVELY, IT BEING THE ELECTION OF THE CURRENT BENEFICIARY UNDER THE DEED OF TRUST TO CAUSE A UNIFIED SALE TO BE MADE OF SAID REAL AND PERSONAL PROPERTY IN ACCORDANCE WITH THE PROVISIONS OF SECTION 2924F(b)(2) OF THE CALIFORNIA CIVIL CODE.

DATE: 2/08/2023

Assured Lender Services, Inc.

Cherie Maples, Vice President of Trustee Operations
Assured Lender Services, Inc.
111 Pacifica
Suite 140
Irvine, CA 92618
Phone: (714) 508-7373

Sales Line: (877)440-4460

Sales Website: www.mkconsultantsinc.com

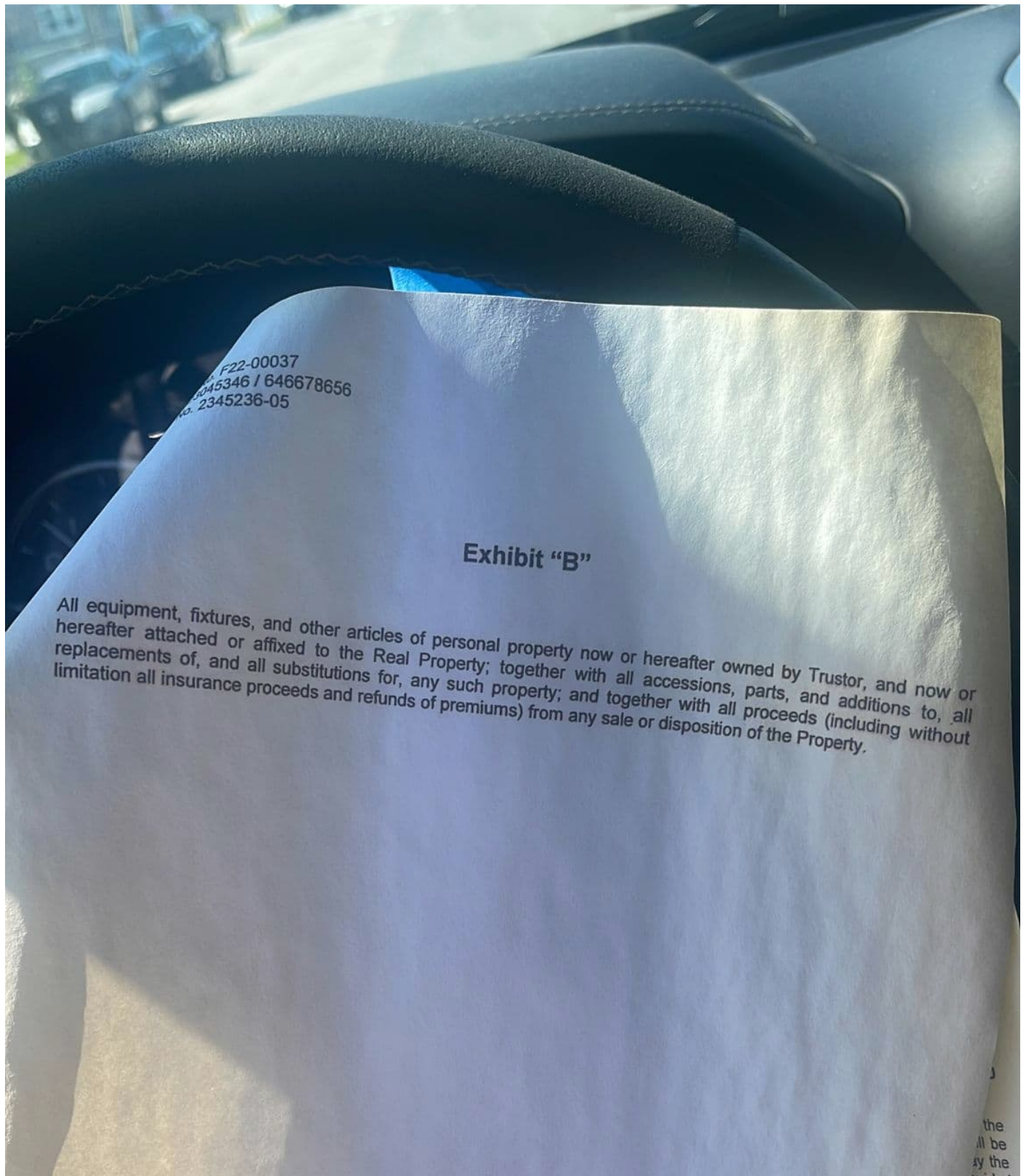
Reinstatement Line: (714) 508-7373

To request reinstatement and/or payoff FAX request to: (714) 505-3831

THIS OFFICE IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE
USED FOR THAT PURPOSE.



—image3.jpeg—





—image4.jpeg—

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO
Assured Lender Services, Inc.
111 Pacifica
Suite 140
Irvine, CA 92618

Trustee Sale No. F22-00037 Loan No. 6723045346 / 646678656 Title Order No. 2345236-05

NOTICE OF TRUSTEE'S SALE

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED
注：本文件包含一个信息摘要
참고사항: 본 첨부 문서에 정보 요약서가 있습니다

NOTA: SE ADJUNTA UN RESUMEN DE LA INFORMACIÓN DE ESTE DOCUMENTO
TALA: MAYROONG BUOD NG IMPORMASYON SA DOKUMENTONG ITO NA NAKALAKIP
LƯU Ý: KÈM THEO ĐÂY LÀ BẢN TRÌNH BÀY TÓM LƯỢC VỀ THÔNG TIN TRONG TÀI LIỆU NÀY

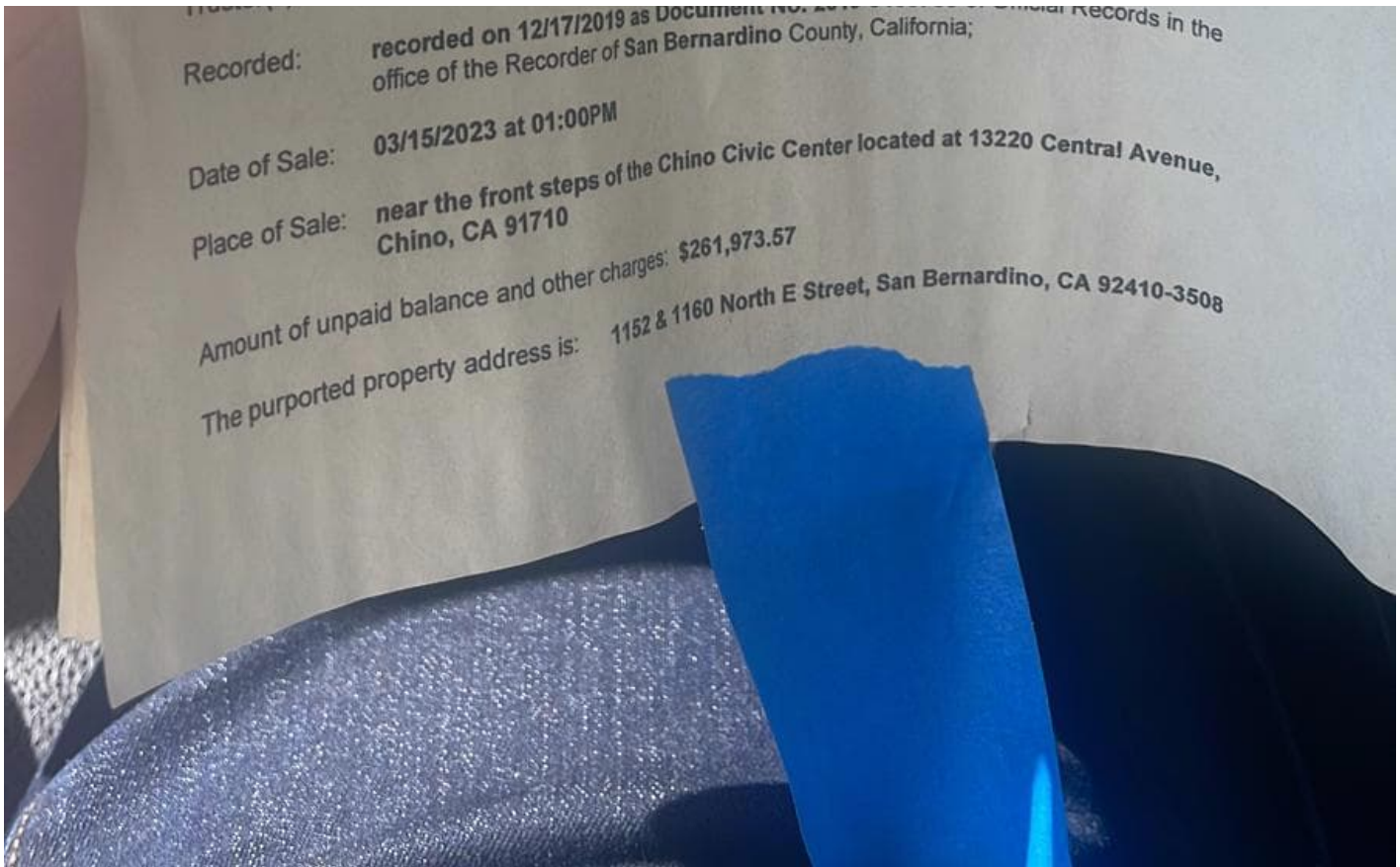
PURSUANT TO CIVIL CODE 2923.3(a), THE SUMMARY OF INFORMATION REFERRED TO ABOVE IS NOT ATTACHED TO THE RECORDED COPY OF THIS DOCUMENT BUT ONLY TO THE COPIES PROVIDED TO THE TRUSTOR.

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES, RENTS, AND PROFITS, AND FIXTURE FILING DATED 12/13/2019 AND MORE FULLY DESCRIBED BELOW (THE "DEED OF TRUST"). UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash or cashiers check (payable at the time of sale in lawful money of the United States) (payable to Assured Lender Services, Inc.), will be held by a duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, to pay the in the note(s), advances, under the terms of the Deed of Trust, interest thereon, legal fees and costs, as provided expenses of the undersigned trustee ("Trustee") for the total amount (at the time of the initial publication of this Notice of Trustee's Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

SAKER ENTERPRISE, INC., a California corporation

Trustor(s):



—Attachments:

image0.jpeg	252 KB
image1.jpeg	130 KB
image2.jpeg	119 KB
image3.jpeg	210 KB
image4.jpeg	189 KB

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 ~~and not a party to this bankruptcy case or adversary proceeding.~~ My business address is:
43430 E Florida Ave F-293, Hemet CA 92544

A.R.

Amended

A true and correct copy of the foregoing document entitled (*specify*): RESPONSE IN OPPOSITION TO MOTION TO
MOTION TO DISMISS AND REQUEST FOR LEAVE TO AMEND; Declaration of Gregg Roberts; and five exhibits

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

I have no access to CM/ECF.

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 10/24/2023, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Debtor Counsel: Amanda Billyard, Financial Relief Law Center, 1200 Main St, Ste C, Irvine, CA 92614-6749 via email per written permission.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

10/24/2023

~~10/23/2023~~

Date

Gregg Roberts

Printed Name

Signature

